

HON. JUDGE THOMAS O. RICE

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON AT SPOKANE**

FRANCEEN TRUSEL, and
TIMOTHY C. AUSTIN,

Plaintiffs,

v.

USAA CASUALTY INSURANCE
COMPANY,

Defendant.

No. 2:23-CV-0222 TOR

STIPULATED PROTECTIVE
ORDER

I. PURPOSES AND LIMITATIONS

Discovery in this action may involve production of confidential, proprietary,
or private information for which special protection may be warranted. Accordingly,

STIPULATED PROTECTIVE
ORDER
(No. 2:23-cv-00222) - 1

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1 the parties hereby stipulate to and petition the Court to enter the following Stipulated
2 Protective Order. The parties acknowledge that this agreement is consistent with
3 LCR 26. It does not confer blanket protection on all disclosures or responses to
4 discovery, the protection it affords from public disclosure and use extends only to
5 the limited information or items that are entitled to confidential treatment under the
6 applicable legal principles, and it does not presumptively entitle parties to file
7 confidential information under seal.
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10 II. "CONFIDENTIAL" MATERIAL

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13 "Confidential" material may include, but not be limited to, the following
14 documents and tangible things produced or otherwise exchanged.

15 It is anticipated plaintiffs may designate the following information as
16 confidential: Personal financial or sensitive identifying information.

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18 It is anticipated that defendant may designate the following information as
19 confidential: Documents responsive to a reasonable scope of Plaintiffs' discovery
20 requests related to Defendant's policies and procedures; Documents responsive to a
21 reasonable scope of Plaintiffs' discovery requests which Defendant otherwise
22 determines contain confidential, proprietary, trade-secret information which should
23 be protected and not publicly disclosed. Defendant further reserves its right to amend
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1 the scope of the confidential information described herein as may become necessary
2 during the course of this litigation.
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4 The listing of specific types of documents is not an admission that such are
5 relevant to this case, that such will be produced, that such are otherwise subject to
6 discovery or admissible evidence, or that such are actually confidential. Such listing
7 indicates that if such production is required, it will be done pursuant to the terms of
8 this Protective Order. There may be other categories of documents, and this list may
9 be expanded or narrowed.
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11

12 III. SCOPE 13

14 The protections conferred by this agreement cover not only Confidential
15 material (as defined above), but also (1) any information copied or extracted from
16 confidential material; (2) all copies, excerpts, summaries, or compilations of
17 confidential material; and (3) any testimony, conversations, or presentations by
18 parties or their counsel that might reveal confidential material.
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21 However, the protections conferred by this agreement do not cover
22 information that is in the public domain or becomes part of the public domain
23 through trial or otherwise.
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1 **IV. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

2
3 4.1 Basic Principles. A receiving party may use confidential material that
4 is disclosed or produced by another party or by a non-party in connection with this
5 case only for prosecuting, defending, or attempting to settle this litigation.
6

7 Confidential material may be disclosed only to the categories of persons and under
8 the conditions described in this agreement. Confidential material must be stored
9 and maintained by a receiving party at a location and in a secure manner that
10 ensures that access is limited to the persons authorized under this agreement.
11

12 4.2 Disclosure of “Confidential” Information or Items. Unless otherwise
13 ordered by the court or permitted in writing by the designating party, a receiving
14 party may disclose any confidential material only to:
15

16 (a) the receiving party’s counsel of record in this action, as well as
17 employees of counsel to whom it is reasonably necessary to disclose the information
18 for this litigation;
19

20 (b) the officers, directors, and employees (including in house
21 counsel) of the receiving party to whom disclosure is reasonably necessary for this
22 litigation, unless the parties agree that a particular document or material produced is
23 for Attorney’s Eyes Only and is so designated;
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1 (c) experts and consultants to whom disclosure is reasonably
2 necessary for this litigation and who have signed the “Acknowledgment and
3 Agreement to Be Bound” (Exhibit A);
4

5 (d) the court, court personnel, and court reporters and their staff;

6 (e) copy or imaging services retained by counsel to assist in the
7 duplication of confidential material, provided that counsel for the party retaining the
8 copy or imaging service instructs the service not to disclose any confidential material
9 to third parties and to immediately return all originals and copies of any confidential
10 material;
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13 (f) during their depositions, witnesses in the action to whom
14 disclosure is reasonably necessary and who have signed the “Acknowledgment and
15 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating
16 party or ordered by the court provided, however, that a party may use confidential
17 material at a deposition or court proceeding of a deponent or witness who has not
18 already signed the certification in the form of Exhibit A hereto, in which case, the
19 party’s obligation shall be to ask that the deponent or witness sign the certification
20 but the party’s right to proceed with the deposition or court proceeding shall not
21 depend on the deponent's or witness's willingness to do so. In the event a deponent
22 or witness being shown confidential material refuses to sign the certification, the
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1 deponent or witness shall not be permitted to retain, reproduce, or copy all or any
2 part of the confidential material. Pages of transcribed deposition testimony or
3 exhibits to depositions that reveal confidential material must be separately bound by
4 the court reporter and may not be disclosed to anyone except as permitted under this
5 agreement;
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7
8 (g) the author or recipient of a document containing the information
9 or a custodian or other person who otherwise possessed or knew the information.

10 4.3 Filing Confidential Material. Before filing confidential material or
11 discussing or referencing such material in court filings, the filing party shall confer
12 with the designating party to determine whether the designating party will remove
13 the confidential designation, whether the document can be redacted, or whether a
14 motion to seal or stipulation and proposed order is warranted. During the meet and
15 confer process, the designating party must identify the basis for sealing the specific
16 confidential information at issue, and the filing party shall include this basis in its
17 motion to seal, along with any objection to sealing the information at issue. If the
18 parties are unable to reach agreement, a party who seeks to maintain the
19 confidentiality of its information must satisfy the requirements of current applicable
20 case law and Fed. R. Civ. P. 26(c). Any motion to seal shall be noted for
21 consideration in accordance with LCR 7. Failure to satisfy this requirement will
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STIPULATED PROTECTIVE
ORDER
(No. 2:23-cv-00222) - 6

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1 result in the motion to seal being denied, in accordance with the strong presumption
2 of public access to the Court's files.
3

4 **V. DESIGNATING PROTECTED MATERIAL**

5 6 5.1 Exercise of Restraint and Care in Designating Material for Protection.

7 Each party or non-party that designates information or items for protection under
8 this agreement must take care to limit any such designation to specific material that
9 qualifies under the appropriate standards. The designating party must designate for
10 protection only those parts of material, documents, items, or oral or written
11 communications that qualify, so that other portions of the material, documents,
12 items, or communications for which protection is not warranted are not swept
13 unjustifiably within the ambit of this agreement.
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17 Mass, indiscriminate, or routinized designations are prohibited. Designations
18 that are shown to be clearly unjustified or that have been made for an improper
19 purpose (*e.g.*, to unnecessarily encumber or delay the case development process or
20 to impose unnecessary expenses and burdens on other parties) expose the
21 designating party to sanctions.
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24 If it comes to a designating party's attention that information or items that it
25 designated for protection do not qualify for protection, the designating party must
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1 promptly notify all other parties that it is withdrawing the mistaken designation.

2 5.2 Manner and Timing of Designations. Except as otherwise provided in
3 this agreement (see, *e.g.*, second paragraph of section 5.2(b) below), or as otherwise
4 stipulated or ordered, disclosure or discovery material that qualifies for protection
5 under this agreement must be clearly so designated before or when the material is
6 disclosed or produced.
7

8 a. Information in documentary form: (*e.g.*, paper or electronic documents
9 and deposition exhibits, but excluding transcripts of depositions or other pretrial or
10 trial proceedings), the designating party must affix the word “CONFIDENTIAL” to
11 each page that contains confidential material. If only a portion or portions of the
12 material on a page qualifies for protection, the producing party also must clearly
13 identify the protected portion(s) (*e.g.*, by making appropriate markings in the
14 margins).
15

16 b. Testimony given in deposition or in other pretrial proceedings: the
17 parties and any participating non-parties must identify on the record, during the
18 deposition or other pretrial proceeding, all protected testimony, without prejudice to
19 their right to so designate other testimony after reviewing the transcript. Any party
20 or non-party may, within fifteen days after receiving the transcript of the deposition
21 or other pretrial proceeding, designate portions of the transcript, or exhibits thereto,
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1 as confidential. If a party or non-party desires to protect confidential information at
2 trial, the issue should be addressed during the pre-trial conference.

3
4 c. Other tangible items: the producing party must affix in a prominent
5 place on the exterior of the container or containers in which the information or item
6 is stored the word "CONFIDENTIAL." If only a portion or portions of the
7 information or item warrant protection, the producing party, to the extent practicable,
8 shall identify the protected portion(s).

9
10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
11 failure to designate qualified information or items does not, standing alone, waive
12 the designating party's right to secure protection under this agreement for such
13 material. Upon timely correction of a designation, the receiving party must make
14 reasonable efforts to ensure that the material is treated in accordance with the
15 provisions of this agreement.
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19 VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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21 6.1 Timing of Challenges. Any party or non-party may challenge a
22 designation of confidentiality at any time. Unless a prompt challenge to a
23 designating party's confidentiality designation is necessary to avoid foreseeable,
24 substantial unfairness, unnecessary economic burdens, or a significant disruption or
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1 delay of the litigation, a party does not waive its right to challenge a confidentiality
2 designation by electing not to mount a challenge promptly after the original
3 designation is disclosed.
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5 6.2 Meet and Confer. The parties must make every attempt to resolve any
6 dispute regarding confidential designations without court involvement. Any motion
7 regarding confidential designations or for a protective order must include a
8 certification, in the motion or in a declaration or affidavit, that the movant has
9 engaged in a good faith meet and confer conference with other affected parties in an
10 effort to resolve the dispute without court action. The certification must list the date,
11 manner, and participants to the conference. A good faith effort to confer requires a
12 face-to-face meeting or a telephone conference.
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16 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
17 court intervention, either party may file and serve a motion to retain or challenge
18 confidentiality. The burden of persuasion in any such motion shall be on the
19 designating party. All parties shall continue to maintain the material in question as
20 confidential until the court rules on the challenge.
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23 **VII. PROTECTED MATERIAL SUBPOENAED OR ORDERED** 24 **PRODUCED IN OTHER LITIGATION**

25 If a party is served with a subpoena or a court order issued in other litigation
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1 that compels disclosure of any information or items designated in this action as
2 “CONFIDENTIAL,” that party must:

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4 a. promptly notify the designating party in writing and include a copy of
5 the subpoena or court order;

6 b. promptly notify in writing the party who caused the subpoena or order
7 to issue in the other litigation that some or all of the material covered by the subpoena
8 or order is subject to this agreement. Such notification shall include a copy of this
9 agreement; and
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11 c. cooperate with respect to all reasonable procedures sought to be
12 pursued by the designating party whose confidential material may be affected.
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14 15 **VIII. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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17 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
18 confidential material to any person or in any circumstance not authorized under this
19 agreement, the receiving party must immediately (a) notify in writing the designating
20 party of the unauthorized disclosures, (b) use its best efforts to retrieve all
21 unauthorized copies of the protected material, (c) inform the person or persons to
22 whom unauthorized disclosures were made of all the terms of this agreement, and
23 (d) request that such person or persons execute the “Acknowledgment and
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1 Agreement to Be Bound” that is attached hereto as Exhibit A.

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3 **IX. INADVERTENT PRODUCTION OF PRIVILEGED OR**
4 **OTHERWISE PROTECTED MATERIAL**

5 When a producing party gives notice to receiving parties that certain
6 inadvertently produced material is subject to a claim of privilege or other protection,
7 the obligations of the receiving parties are those set forth in Federal Rule of Civil
8 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
9 may be established in an e-discovery order or agreement that provides for production
10 without prior privilege review. The parties agree to the entry of a non-waiver order
11 under Fed. R. Evid. 502(d) as set forth herein.
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15 **X. TERMINATION AND RETURN OF DOCUMENTS**

16 Within 60 days after the termination of this action, including all appeals, each
17 receiving party must return all confidential material to the producing party, including
18 all copies, extracts and summaries thereof. Alternatively, the parties may agree upon
19 appropriate methods of destruction.
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22 Notwithstanding this provision, counsel are entitled to retain one archival
23 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
24 correspondence, deposition and trial exhibits, expert reports, attorney work product,
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1 and consultant and expert work product, even if such materials contain confidential
2 material.
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4 The confidentiality obligations imposed by this agreement shall remain in
5 effect until a designating party agrees otherwise in writing or a court orders
6 otherwise.
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STIPULATED PROTECTIVE
ORDER
(No. 2:23-cv-00222) - 13

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
2
3

4 DATED: February 27, 2024

By: s/Kathryn Knudsen

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Kathryn M. Knudsen, WSBA #41075

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11
12 DATED: February 27, 2024

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26
STIPULATED PROTECTIVE
ORDER
(No. 2:23-cv-00222) - 14

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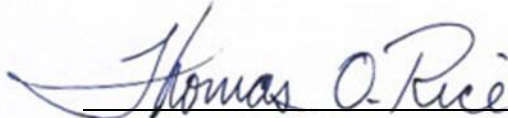
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1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2
3 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the
4 production of any documents, electronically stored information (ESI) or
5 information, whether inadvertent or otherwise, in this proceeding shall not, for the
6 purposes of this proceeding or any other federal or state proceeding, constitute a
7 waiver by the producing party of any privilege applicable to those documents,
8 including the attorney-client privilege, attorney work-product protection, or any
9 other privilege or protection recognized by law. This Order shall be interpreted to
10 provide the maximum protection allowed by Fed. R. Evid. 502(d). The provisions
11 of Fed. R. Evid. 502(b) do not apply. Nothing contained herein is intended to or
12 shall serve to limit a party's right to conduct a review of documents, ESI or
13 information (including metadata) for relevance, responsiveness and/or segregation
14 of privileged and/or protected information before production. Information produced
15 in discovery that is protected as privileged or work product shall be immediately
16 returned to the producing party.

17
18 DATED: March 1, 2024.




The Honorable Thomas O. Rice
United States District Court Judge

STIPULATED PROTECTIVE
ORDER
(No. 2:23-cv-00222) - 15

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare
under penalty of perjury that I have read in its entirety and understand the Stipulated
Protective Order that was issued by the United States District Court for the Eastern
District of Washington on [date] in the case of *Trusel et al. v. USAA Casualty
Insurance Company*, No. 2:23-cv-00222 TOR. I agree to comply with and to be
bound by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and punishment
in the nature of contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Stipulated Protective Order to any
person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Eastern District of Washington for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____